

REMARKS

Claims 1-31 are pending. Claims 1, 8, 17-18, 21, 27, and 29 have been amended. Support for the amendments can be found in the Specification as filed at least in paragraphs [0027], [0031], and [0035], and FIGS. 4A and 4B. No new matter has been added. The rejections of the claims are respectfully traversed in light of the amendments and following remarks, and reconsideration is requested.

Rejections Under 35 U.S.C. § 112

Claim 31 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner writes that "[i]t is not understood how the headset achieves pivoting about a contact point that is located between the speaker capsule and the inner recess of the user's ear when the pivotal joint is located at interface 105."

Applicant refers the Examiner to FIG. 4C and paragraph [0037] which illustrates and describes, respectively, an embodiment of the headset pivoting about a contact point 410. Applicant cannot find any reference to an interface 105 and assumes the Examiner was referring to an interface 103 or an interface 130 of the headset 100 (FIG. 1A). The contact point recited in Claim 31 is not located at such an interface 103 or 130.

Thus, Applicant submits that Claim 31 is definite and requests withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Rejections Under 35 U.S.C. § 102Keliiliki

Claims 1, 4-7, 9-13, and 29-31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Keliiliki (U.S. Patent No. 5,412,736).

In rejecting the claims, the Examiner writes in part:

Regarding claim 1, Keliiliki teaches an ear clasp headset comprising: a speaker capsule (40) . . . a headset body (42) operably coupled to the speaker capsule, wherein the headset body (42) is capable of contacting an outer portion (68) of the user's ear; and a

headset tail (76) operably coupled to the headset body, wherein the headset tail (76) comprises a curved structure capable of flexing open and close for contacting a lower portion of the user's ear.

Keliiliki discloses the following:

The back surface 50 FIG. 4 of concha 48 defines the base of auricle or ear 18. (Keliiliki, col.7, ll.22-24).

As best understood by reference to FIGS. 3, 4 and 5 taken together, hook portion 64 of earpiece 42 is curved to fit against head 20 of the user around the rear and over the top of base 62 of the auricle or ear 18. Forward end 66 of hook portion 64 is worn in front of spine 60 of helix 54, while rearward end 68 of hook portion 64 is worn behind scapha 52 in contact with rear surface 50 of concha 48. . . . Brace portion 74 conforms closely with base 62 of ear 18, contacting the back surface 50 of concha 48. Remote end 76 of brace portion 74 terminates behind earlobe 30 in contact with rear surface 50 of concha 48. (Keliiliki, col.7, ll.53-66) (emphases added).

In this light, earpiece 42 will be appreciated to be an ear-mountable speaker support which is ergonomically tailored to cradle ear 18 of the user. The speaker support comprises a flexible open loop, formed substantially in a single plane. The loop is so sized and configured as to rest freely against the head, conforming to the shape of the base of the auricle. The plane defined by the loop is generally parallel to the head and is free of the forces urging the loop away from the head. (Keliiliki, col.7, line 67-col.8, line 7) (emphases added).

As arc portion 78 departs outwardly from the curvature of brace portion 74, arc portion 78 supports electrical connector 82 downwardly behind earlobe 30 in a generally vertical orientation when carphone 16 is worn by a user. (Keliiliki, col.9, ll.29-33; FIGS. 3-5) (emphases added).

Thus, Keliiliki discloses that earpiece 42 is formed as a loop substantially in a single plane generally parallel to the head. (Keliiliki, FIG. 4). Keliiliki further discloses that a lower portion of the earpiece is positioned behind the earlobe in a vertical orientation. Applicant could not find any disclosure or suggestion by Keliiliki of "a headset body operably coupled to the speaker capsule, wherein the headset body has a curved profile substantially perpendicular to the plane of the user's ear" and "a headset tail operably coupled to the headset body, wherein the headset tail includes a curved structure capable of flexing open and close for contacting a lower portion of the user's ear," as recited in amended Claim 1.

Accordingly, because Keliiliki does not disclose or suggest all the limitations of amended Claim 1, Applicant submits that Claim 1 is not anticipated by Keliiliki.

Similarly, amended Claim 29 recites a method for donning an ear clasp headset including "placing a headset tail of the ear clasp headset in an open position away from a headset body of the ear clasp headset, the headset body having a curved profile substantially perpendicular to the plane of the user's ear; positioning the headset body over the user's outer ear; and placing the headset tail in a closed position to clip a lower portion of the user's ear between the headset tail and the headset body." Accordingly, because Keliiliki does not disclose or suggest all the limitations of amended Claim 29, Applicant submits that Claim 29 is not anticipated by Keliiliki.

Claims 4-7 and 9-13 are dependent on Claim 1 and contain additional limitations that further distinguish them from Keliiliki. In particular, the Examiner writes in part regarding claim 7, "Keliiliki teaches the headset body (42) further comprises a detachable accent (44)."

However, Keliiliki only discloses that in "order to increase the comfort of the speaker 40 in the concha of the ear of a user, speaker 40 may be enclosed by a removable cover 44 comprised of foam rubber." (Keliiliki, col.6, ll.53-56). Thus, Keliiliki does not disclose or suggest a headset "wherein the headset body further comprises a detachable accent," as recited in Claim 7. Accordingly, Claim 7 is not anticipated by Keliiliki.

Therefore, Claims 4-7 and 9-13 are allowable over Keliiliki for at least the same reasons provided above with respect to Claim 1.

Claims 30-31 are dependent on Claim 29 and contain additional limitations that further distinguish them from Keliiliki. Therefore, Claims 30-31 are allowable over Keliiliki for at least the same reasons provided above with respect to Claim 29.

Accordingly, Applicant submits that the claims are not anticipated by Keliiliki.

Skulley et al.

Claims 17, 19-20, 23-26, and 28 are rejected under 35 U.S.C. § 102(e) as being anticipated by Skulley et al. (U.S. Patent No. 6,449,374 hereinafter "Skulley").

In rejecting the claims, the Examiner writes in part:

Regarding claim 17, Skulley teaches a speaker capsule (56) . . . a headset body (1) operably coupled to the speaker capsule . . . a headset tail (near 46) operably coupled to the headset body, wherein the headset tail (near 46) comprises a curved structure capable of flexing open and close for contacting a lower portion of the user's ear.

Skulley discloses the following:

[T]he earhook 10 includes a prehensile member 12 adapted to curve at least partially around and behind the ear in a plane substantially vertical to the plane of the ear. (Skulley, col.4, ll.1-3; FIG. 1C).

Thus, Skulley, similar to Keliiliki, discloses a earhook which is formed as a loop substantially in a single plane generally parallel to the plane of the ear. (Skulley, FIG. 1C). Applicant could not find any disclosure or suggestion by Skulley of "a headset body operably coupled to the speaker capsule, wherein the headset body includes a curved structure . . . , the curved structure having a curved profile substantially perpendicular to the plane of the user's ear" and "a headset tail operably coupled to the headset body, wherein the headset tail includes a curved structure capable of flexing open and close for contacting a lower portion of the user's ear," as recited in amended Claim 17.

Accordingly, because Skulley does not disclose or suggest all the limitations of amended Claim 17, Applicant submits that Claim 17 is not anticipated by Skulley. Claims 19-20, 23-26, and 28 are dependent on Claim 17 and contain additional limitations that further distinguish them from Skulley. Therefore, Claims 19-20, 23-26, and 28 are allowable over Skulley for at least the same reasons provided above with respect to Claim 17.

#### Rejections Under 35 U.S.C. § 103

##### Keliiliki

Claims 2-3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Keliiliki. Claims 2-3 are dependent on Claim 1 and contain additional limitations that further distinguish them from Keliiliki. Therefore, Claims 2-3 are allowable over Keliiliki for at least the same reasons provided above with respect to Claim 1.

Furthermore, in rejecting the claims, the Examiner writes in part:

Regarding claims 2-3, Keliiliki does not teach the speaker capsule comprises a transducer and a speaker faceplate for directing sound. However, the examiner takes official notice that it is known to include a faceplate on a speaker capsule for structural containing and positioning the speaker transducer within the speaker capsule.

Applicant submits that the Examiner has not taken official notice regarding the subject matter of Claim 3, which recites that "the speaker faceplate is capable of directing sound from the transducer to the user's right and left eardrums." Applicant requests documentation supporting the Examiner's Official Notice with regard to Claims 2 and 3.

Keliiliki in view of Yang

Claims 14-16 are rejected under 35. U.S.C. § 103(a) as being unpatentable over Keliiliki in view of Yang (U.S. Patent No. 6,097,827).

Yang does not remedy the deficiencies of Keliiliki noted above with respect to independent Claim 1. Claims 14-16 are dependent on Claim 1 and contain additional limitations that further distinguish them from Keliiliki in view of Yang. Therefore, Claims 14-16 are allowable over Keliiliki and Yang, alone or in combination, for at least the same reasons provided above with respect to Claim 1.

Allowable Subject Matter

Applicant wishes to thank the Examiner for the indication that Claims 8, 18, 21-22, and 27 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8, 18, and 21 have been rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 22 is believed to be dependent on a now allowable Claim 17.

CONCLUSION

For the above reasons, Applicant believes pending Claims 1-31 are now in condition for allowance and allowance of the Application is hereby solicited. If the Examiner has any questions or concerns, the Examiner is hereby requested to telephone Applicant's Attorney at (831) 458-7758.

Respectfully submitted,



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